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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1810 of 2008

&

M.P.No.1 of 2008

The National Insurance Co. Ltd.,
Rep. by its Branch Manager,
Mettupalayam.

...Appellant/3rd respondent

Vs

1.Vishnu ...1st respondent/Petitioner

2.R.Punniyamoorthy @ Easwaran ...2nd respondent/1st respondent

3.M.Nazamudeen
...3rd Respondents/respondent/ 2nd respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed in MCOP.No.5 of 2006 dated 16.02.2007 on the file of the Motor Accident Claims Tribunal (Sub ordinate Judge) of Nilgiris at Udagamandalam.

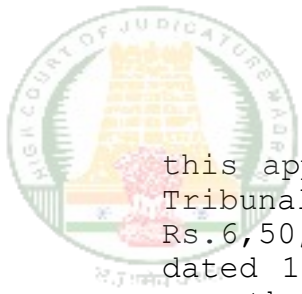
For Appellant : Mr.J.Chandran
For Respondent 1 : Mr.L.Mouli

JUDGMENT

The instant appeal has been filed by the Insurance Company challenging the Award dated 16.02.2007 passed by the Motor Accident Claims Tribunal (Sub ordinate Judge) of Nilgiris at Udagamandalam in MCOP.No.05 of 2006.

The brief facts leading to the filing of the instant appeal are as follows:

2. One Raju died on 08.07.2003 as a result of an accident caused by a lorry bearing registration No.TAP 1969 owned by the third respondent and insured with the Appellant. The only dependent of the deceased Raju who is the first respondent in



this appeal, preferred a claim before the Motor Accident Claims Tribunal in MCOP.No.5 of 2006 seeking a compensation of Rs.6,50,000/-. The Motor Accident Claims Tribunal by its Award dated 16.02.2007 in MCOP.No.5 of 2006 directed the Appellant to pay the first respondent a sum of Rs.3,32,000/- together with interest at the rate of 7.5 % per annum from the date of claim till the date of realisation.

3. Aggrieved by the Award dated 16.02.2007, passed by the Motor Accident Claims Tribunal in M.C.O.P.No.5 of 2006, the instant appeal has been filed by the Insurance Company.

4. Heard, Mr.J.Chandran learned counsel for the Appellant and Mr.L.Mouli, learned counsel for the first respondent. Despite service of notice on the remaining respondents, no one has entered appearance on their behalf.

5. According to the learned counsel for the Appellant, the driver of the vehicle insured with the Appellant did not possess a valid driving licence at the time of accident. The learned counsel for the Appellant would further contend that the driver of the vehicle was one Punniyamoorthy and not punniyamoorthy (a) Easwaran. According to the learned counsel for the Appellant, Easwaran who was possessing a valid driving licence deposed as if he is also called as Punniyamoorthy and based on his licence, the first respondent fraudulently had claimed before the Tribunal that the Punniyamoorthy was having a valid driving licence.

6. Per contra, learned counsel for the first respondent would submit that Punniyamoorthy is otherwise called as Easwaran and he was having a valid driving licence at the time of accident. According to the learned counsel for the first respondent, he was the person who drove the vehicle which caused the accident.

7. This Court after having considered the materials available on record and after examining the impugned Award and after hearing the submissions of the respective counsels, observes the following:

a) It is an undisputed fact that the vehicle insured with the Appellant caused the accident, which resulted in the death of Raju.

b) There is a clear finding given by the Tribunal that only due to the rash and negligent driving by the driver of the vehicle insured with the Appellant, the accident had happened which resulted in the death of Raju.

c) The Appellant has not challenged the claim of compensation awarded to the first respondent under the impugned Award. The only challenge made in this appeal is that the driver



of the vehicle did not possess a valid driving licence. This issue has now been settled by a catena of decisions both by this Court as well as by the Hon'ble Supreme Court, wherein it has been held that the Appellant insurance company will have to pay the compensation to the claimant and recover the same from the insured namely the owner of the vehicle, in case of any policy violation. In the instant case, the owner has remained ex parte before the Tribunal as well as before this Court. It is the consistent stand of the Appellant before the Tribunal as well as before this Court that the driver of the vehicle did not possess a valid driving licence. There is no contra evidence available on record to disprove the said contention.

d) In the considered view of this Court, the Tribunal ought to have granted pay and recovery rights to the Appellant.

8. In the light of the above observations, there is no merit in the instant appeal excepting for grant of pay and recovery rights to the Appellant.

9. In the result, the Award dated 16.02.2007 passed by the Motor Accident Claims Tribunal in MCOP.No.5 of 2006 is hereby modified only to the extent that the Appellant is granted pay and recovery rights. Insofar as quantum and other aspects of the Award are concerned, the same are not disturbed by this Court.

10. It is brought to the notice of this court that the entire Award amount with interest has already been deposited by the Appellant. Therefore, the Appellant is permitted to recover the same from the owner of the vehicle namely the third respondent in this appeal and the first respondent is permitted to withdraw the amount deposited by the Appellant by filing an appropriate application.

11. The Appeal is partly allowed and the connected miscellaneous petition is closed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
Sub ordinate Judge,
Nilgiris at Udagamandalam



2.The Section Officer,
Vernacular Section,
Madras High Court.

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+1cc to Mr.J.Chandran, Advocate, S.R.No.65450

+1cc to Mr.L.Mouli, Advocate, S.R.No.65662

C.M.A.No.1810 of 2008

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M.P.No.1 of 2008

KJ(CO)

GSP(02/01/2019)